

☒ GRANT ☐ COOPERATIVE AGREEMENT

# FINANCIAL ASSISTANCE AWARD

AWARD PERIOD

37 Months from Award Date

RECIPIENT NAME

City of Kingston

AWARD NUMBER

01-79-14217

STREET ADDRESS

420 Broadway

FEDERAL SHARE OF COST

\$ 1,120,000.00

CITY, STATE, ZIP CODE

Kingston, New York 12401

RECIPIENT SHARE OF COST

\$ 280,000.00

AUTHORITY

Public Works and Economic Development Act of 1965, as amended, (42 U.S.C Section 3121, et seq)

TOTAL ESTIMATED COST

\$ 1,400,000.00

CFDA NO. AND PROJECT TITLE

11.307 Washington Avenue Sinkhole Repair and Tunnel Restoration

BUREAU

20

FUND

40

FCFY

13

PROJECT-TASK

14217-00

ORGANIZATION

01

OBJECT CLASS

41-79-14-00

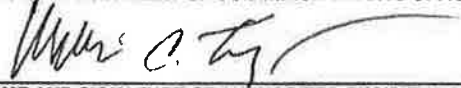
This Award approved by the Grants Officer is issued in triplicate and constitutes an obligation of Federal funding. By signing the three documents, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and the third document shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Award.

- ☐ Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008)
- ☒ Special Award Conditions
- ☒ Line Item Budget
- ☐ 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
- ☒ 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- ☐ OMB Circular A-21, Cost Principles for Educational Institutions
- ☒ OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- ☐ OMB Circular A-122, Cost Principles for Nonprofit Organizations
- ☐ 48 CFR Part 31, Contract Cost Principles and Procedures
- ☒ OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations
- ☒ Other(s): EDA Standard Terms and Conditions for Construction Projects (October 2007, as amended

December 13, 2007); Supplemental Guidance for EDA Grant Recipients on Reporting Requirements

under the Transparency Act

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER



TITLE

Regional Director

DATE

12/24/12

TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Shayne Gallo

TITLE

Mayor

DATE

**U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**

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**Special Award Conditions of Financial Assistance Award for Economic Adjustment  
Assistance under Section 209 of the Public Works and Economic Development Act of 1965,  
as amended (42 U.S.C. Section 3121 *et seq.*)**

**FY 2012 Disaster Relief Opportunity pursuant to the Consolidated and Further Continuing  
Appropriations Act, Pub. L. No. 112-55, 125 Stat. 552(2011) – availability of funds under section 703 of  
the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3233) (PWEDA).**

**RECIPIENT: City of Kingston, New York**

**PROJECT:** The investment consists of stabilization and repair of Washington Ave following the emergency repair of the Washington Avenue tunnel including these elements: 1. Soil stabilization, explorative rock coring and grouting void; 2. Relocation of and confine rest of Tannery Brook; and 3. Restoration of Washington Avenue - elements are the roadway, subgrade, sidewalks, curbs, water and sewer lines, landscaping and appurtenances

1. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Time allowed after receipt of Financial Assistance Award:

Return of the Executed Financial Assistance Award. . . . . 30 days

Time allowed after Acceptance by Recipient of Financial Assistance Award:

Start of Construction. . . . . 12 months

Construction Period . . . . . 24 months

Prior to the approval of Plans and Specifications, the Recipient will provide to EDA for approval the executed A/E Agreement.

Project Closeout – All Project closeout documents, including final financial information and any required program reports, shall be submitted to the Government not more than 90 days after the date the Recipient accepts the completed Project from the contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within this time schedule. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (codified by 53 Fed. Reg. 8048-9, 8102, March 11, 1988).

2. **AVAILABILITY OF GRANT FUNDS:** Because the grant funds for the Project by Statute are available until expended, the provisions of Public Law 101-510, enacted November 5, 1990, section 1405, amending sub chapter IV of chapter 15, title 31, U.S.C., are not applicable to the grant for the

Project. In keeping with appropriate and prudent project management, the Project must be physically and financially completed by September 30, 2017.

3. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993. Performance measures and reporting requirements that presently apply to program activities funded by this grant will be provided in a separate GPRA information collection document. EDA will advise recipients in writing within a reasonable period prior to the time of submissions of the reports in the event that there are any modifications in the performance measures.
4. **GRANT ADMINISTRATION PLAN:** Within sixty (60) days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Regional Office a Grant Administration Plan which outlines how the Recipient will administer the EDA Award. The plan must include the following information:
  - a. Names, addresses, phone and facsimile numbers and email addresses for all personnel responsible for all activities pertaining to the EDA Award. These activities include, but are not limited to, compliance with grant conditions, processing payment requests to EDA, engineering activities such as design and inspection and legal services.
  - b. Proposed detailed project implementation schedule. The schedule shall contain at a minimum, the following milestones:
    - Request for Proposals for Engineering Services
    - Award of Engineering Contract
    - Start of Design Activities
    - Completion of Final Plans and Specifications
    - Date All Permits will be obtained
    - Advertisement for Bids
    - Bid Opening
    - Construction Contract Award
    - Pre-Construction Conference
    - Issuance of Notice-to-Proceed
    - Substantial Completion Date
    - Final Completion Date/Acceptance by Owner
  - c. **Project Financial Plan:** EDA funds will not be disbursed until all special award terms and conditions to the EDA Award are satisfied and all construction contracts are awarded. The plan must address how expenses will be paid prior to the disbursement of funds by EDA. The plan should explain who will be responsible for preparing payment requests to EDA.
5. **MATCHING SHARE:** In affirming this Award, the Recipient certifies that the non-federal share of Project costs is committed and is available as needed for the Project, that the non-federal share is from sources which allows for the use of its funding as non-federal match for the EDA Project, and

that the non-federal share will not affect ownership of, or title to, the Project facilities. The Recipient further acknowledges that, **prior to award of any construction contracts**, it will be required to provide the Regional Office with evidence satisfactory to the Government that all funds necessary to complete the Project are available. *See also Standard Terms and Conditions for Construction Projects, Section B, Paragraph 3.*

6. **DELAYED PROGRESS:** If significant construction (as determined by EDA) is not commenced within two years of the approval of the Award or by the date estimated for start of construction in the award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA award will be automatically suspended and may be terminated if EDA determines, after consultation with the award Recipient(s), that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.
7. **REAFFIRMATION OF APPLICATION:** Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient(s) submitted its application to the Government, Recipient(s) hereby reaffirms and states that:
  - a. All data in said application and documents submitted with the application are true and correct as of the date of this Award and were true and correct as of the date of said submission;
  - b. Said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s); and
  - c. Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with or attached to said application.
8. **INDIVIDUAL BACKGROUND SCREENING:** Notwithstanding the requirements pertaining to individual background screenings set forth in Section H of the EDA's Standard Terms and Conditions for Construction Projects (as amended December 13, 2007), Individual Background Screenings will be conducted in accordance with the updated guidance contained in Chapter 21 (February 2010) of the DOC Grants and Cooperative Agreements Manual. This guidance may be viewed on line at [http://www.osc.doc.gov/oam/grants\\_management/policy/doc\\_grants\\_manual/documents/Ch21\\_020210.pdf](http://www.osc.doc.gov/oam/grants_management/policy/doc_grants_manual/documents/Ch21_020210.pdf). To the extent of conflict between said updated guidance and said Section H, the terms of said updated guidance shall control.
9. **RECIPIENT'S DUTY TO REFRAIN FROM EMPLOYING CERTAIN GOVERNMENT EMPLOYEES:** For the two-year period beginning on the date the Government executes this award, the Recipient(s) agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

- (i) On the date the government executed this award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Government; and
- (ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

The two-year period and associated restrictions referenced above also shall apply beginning on the date the Government executes any cost amendment to this award that provides additional funds to the Recipient(s).

10. **REPORTING UNLIQUIDATED OBLIGATIONS:** All Recipients of an EDA grant award of more than \$100,000 whose Award has not been fully disbursed are required to submit an SF-425, Federal Financial Report to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the Recipient as of the end of the reporting period.

The Recipient shall submit a Standard Form 425, *Federal Financial Report (FFR)* (OMB Control No. 0348-0061) on a semi-annual basis for each Fiscal Year within the Award's thirty (30) month time frame, or any portion thereof until the final grant payment is made by EDA. Reports are due no later than 30 days following the end of each reporting period. A final report is due within 90 days of closeout. Noncompliance with this requirement will result in the suspension of EDA grant disbursements. *See also Standard Terms and Conditions, for Construction Projects. Section B, Paragraph 1.* Form SF-425 and instructions for completing the form are available at [http://www.whitehouse.gov/omb/grants/grant\\_forms.html](http://www.whitehouse.gov/omb/grants/grant_forms.html)

11. **AUDIT REQUIREMENTS:** Applicable audit requirements are contained in OMB Circular A-133.
12. **TITLE OPINION:** Prior to the initial disbursement of funds by EDA, the Recipient shall submit to the Regional Office, the opinion of title that is required under the EDA's *Standard Terms and Conditions for Construction Projects*, Section M; Paragraph 3.
13. **ARCHITECT /ENGINEER AGREEMENT:** Prior to the disbursement of funds by EDA, the Recipient shall submit to the Government for approval an Architect/Engineer Agreement which meets EDA's requirements contained in the EDA's *Summary of EDA Construction Standards*. The agreement must provide for all services required by the Recipient for the design and engineering phases of the project. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable.
14. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 4 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of the



Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each new project area shall be as follows: From April 1, 1981, until further notice 6.9 percent. All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions. Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

15. FREEDOM OF INFORMATION ACT (FOIA): EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 522) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a FOIA request. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.
16. USEFUL LIFE: The useful life of this Project for purposes including, but not limited to, establishing a security interest in the real property as required by EDA's *Standard Terms and Conditions for Construction Projects*, Section M, Paragraph 3, is hereby defined to be 15 years from the date of the award.
17. ENCUMBRANCES/RECORDED STATEMENT: EDA requires a recorded statement on the building and improvements financed by the EDA financial assistance award. In the event that private bank financing is sought in post-approval, EDA authorization of an encumbrance (mortgage) waiver may be required. Prior to the first disbursement of EDA funds, Recipients must provide all financial data required by EDA to complete a mortgage waiver analysis satisfactory to EDA pursuant to 13 C.F.R. Section 314.6 (c). EDA will in its own discretion determine whether the lien, covenant or statement of interest is satisfactory, and EDA may require an opinion of counsel for the Recipient that it is valid and enforceable according to its terms, and has been properly recorded. In addition, no EDA funds will be disbursed until the Recipient provides EDA with an executed and recorded copy of the EDA Agreement and Mortgage.
18. NON-RELOCATION POLICY: In signing this award of financial assistance, Recipient(s) attest that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the

Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.

19. **PROTECTION OF HISTORIC PROPERTIES:** Prior to the approval of Plans and Specifications, the Recipient will provide evidence to EDA that the following language has been noted in any contracts and plans for the proposed work: Prior to any alteration to above ground structures or prior to new excavation of any intact soils, the contractor will cease work and contact Kenneth Markunas, Historic Sites Restoration Coordinator, at the New York State Office of Parks, Recreation, and Historic Preservation at 518.237.8643 ext. 3273
20. **CCR REGISTRATION AND DUNS NUMBER REQUIREMENTS:** All recipients of awards made on or after October 1, 2010 are required to maintain current registrations in the Central Contractor Registration (CCR) database throughout the project period until the final financial report is submitted or until the recipient receives final payment, whichever is later. In addition, recipients must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and may make sub-awards only to sub-recipients that obtain a DUNS number. The following details the DUNS and CCR requirements. Please read the following carefully and contact the EDA Project Officer with any questions.
- I. Central Contractor Registration and Universal Identifier Requirements.
- a. *Requirement for Central Contractor Registration (CCR).*  
Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
- b. *Requirement for Data Universal Numbering System (DUNS) numbers.* If you are authorized to make subawards under this award, you:
1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
  2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- c. *Definitions.* For purposes of this award term:
1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional

information about registration procedures may be found at the CCR Internet site (currently at <http://www.cr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
  3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
    - a. A Governmental organization, which is a State, local government, or Indian Tribe;
    - b. A foreign public entity;
    - c. A domestic or foreign nonprofit organization;
    - d. A domestic or foreign for-profit organization; and
    - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
  4. Subaward:
    - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
    - b. The terms does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
    - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
  5. Subrecipient means an entity that:
    - a. Receives a subaward from you under this award; and
    - b. Is accountable to you for the use of the Federal funds provided by the subaward.
21. **TRANSPARENCY ACT REPORTING:** All recipients of awards made on or after October 1, 2010 are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act). The following details the requirements of both. In general, all recipients are responsible for reporting subawards of \$25,000 or more. Please note that the Transparency Act reporting requirement applies to subawards only, and not to procurements you enter into under this award. The required reporting subaward data elements may be found at [www.fsrs.gov](http://www.fsrs.gov). In addition, recipients that meet certain criteria are responsible for reporting executive compensation. Please read the following carefully and contact the EDA Project Officer with any questions.
- I. Reporting Subawards and Executive Compensation.
    - a. *Reporting of first-tier subawards.*
      1. *Applicability.* Unless you are exempt as provided in paragraph d, of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery



funds (as defined in action 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions post at <http://www.fsrs.gov> specify.

b. *Reporting Total Compensation of Recipient Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if-

i. The total Federal funding authorized to date under this award is \$25,000 or more;

ii. In the preceding fiscal year, you received-

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if-

i. in the subrecipient's preceding fiscal year, the subrecipient received-

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

iii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local governments, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. *Salary and bonus.*

- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004)(FAS123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**Supplemental Guidance for EDA Grant Recipients****On Reporting Requirements under the Transparency Act**

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**Background**

The Federal Funding Accountability and Transparency Act (FFATA or Transparency Act – P. L/ 109-22, as amended by Section 6202(a) of P.L. 110-252) was enacted to increase transparency and improve access to Federal Government information. Specifically, this Act was designed to make federal expenditures of taxpayer dollars more transparent to the public by providing readily accessible, complete, accurate, and usable federal spending data.

In order to ensure that these outcomes are achieved, Congress established strict requirements for both Agency and federal grant recipients.

Your received EDA award obligates you to comply with the provisions for reporting outlined in the Transparency Act. In addition, your organization may be required to provide information on Government Performance and Accountability Act of 1993 (GPRA) performance measures.

This memorandum outlines reporting obligations required under the Transparency Act, and highlights the difference between these reporting requirements and GPRA reporting requirements.

**Summary of Reporting Requirements**

Beginning October 1, 2010 all recipients of Federal grants \$25,000 and greater will be required to provide information on the prime award and first-tier sub-awards.

Data on prime awards will be pre-populated, meaning that grantees will not have to submit reports on their award to a central website. Prime grantees that have sub-awards (see definition below) will be required to report on this award by the end of the month after the month in which

the sub-award is given. Unlike in the Recovery Act, reporting requirements cannot be delegated from the prime to a sub-award.

**All prime awards will be pre-populated to the FSRS.gov website from a range of Federal data sources, including the Central Contractor Registration System (CCR) database, Dun and Bradstreet, and USASpending.gov.**

**In order to maintain registration to the FSRS.gov website Federal grant recipients will have to acquire and keep active CCR and DUNS numbers throughout the period of their award.**

**Prime recipients will have responsibility to report first-tier sub-award information by the month after the month in which the sub-award was made in cases where the value is \$25,000 or greater.**

Prime grantees will be required to provide the following types of information about first-tier sub-awards valued \$25,000 and greater:

- Name of entity received award
- Amount of award
- Funding agency (same as prime)
- CFDA number of grants (same as prime)
- Program source (same as prime)
- Award title description of the purpose for the funding action
- Location of the entity (including congressional district)
- Place of performance (including congressional district)
- Unique identifier of the entity and its parent
- Total compensation and names of top five executives

The data fields total compensation and names of top five executives are required *if and only if* the following conditions are both met:

- More than 80% of annual gross revenues from the federal government, and those revenues are greater than \$25 million annually; and,
- Compensation information is not already available through reporting to the SEC.

### **Key Definitions**

For the purposes of the Transparency Act, **prime recipients** or prime awards are the entities receiving a Federal grant or cooperative agreement in the amount of \$25,000 or more. The only exceptions to reporting are in cases of Federal inter-agency transfers of award funds or in cases where Federal awards are given to entities that had a gross income, from all sources, of less than \$300,000 in the entities' previous tax year.

**First-tier sub-awards** are defined by OMB as entities receiving federal funds directly from a prime grant recipient to accomplish a portion of the scope of work of the federal award. EDA has clarified this definition based on previous precedent to mean that for the Agency's purposes, first-tier sub-awards are defined as those first-tier EDA eligible recipients who receive a non-competitive award under the grant or cooperative agreement. Under this definition, all EDA co-applicants are treated as sub-awards.

In most cases, the first tier sub-award will be the entity that has a legal contract in place to perform some portion of the scope of work for the prime recipient. One notable exception is for EDA's Revolving Loan Fund Grants (RLFs): under the Recovery Act recipient reporting requirements EDA interpreted those receiving RLFs to be beneficiaries of the project rather than sub-recipients, which prevented those receiving loans from having to report. EDA intends to use this precedent with RLFs. What this means is that recipients receiving EDA funds to support RLFs will be required to report on any first-tier sub-awards that is more than \$25,000, but will not have to report any information on those receiving loans from the RLF.

For the purposes of this Act, a **New Award** shall be interpreted to mean a project that is entirely new in scope and funding. At this time continuation grants will not be subject to these reporting requirements unless it is a new award. This means only FY 2011 grants getting new 9-digit project numbers (no two-digit amendment numbers on the end of an original award) will be required to report beginning October 1, 2010.

### **Mechanisms for Reporting**

Beginning October 1, 2010 all recipients of Federal grant \$25,000 and over will be required to provide information on the prime award and first-tier sub-awards.

**All prime award data will be pre-populated** to the website [www.fsrs.gov](http://www.fsrs.gov) from a range of Federal data sources, including the Central Contractor Registration Systems (CCR) database, Dun and Bradstreet, and USASpending.gov. Data from USASpending.gov is populated by data extracts provided by the granting Agency (EDA) based on information reported in the grant application forms (for example, SF-424).

**This means that prime recipients do not have to provide new information on their award to the fsrs.gov website.** However, prime recipients do have a responsibility to ensure that consistent information is provided to CCR, DUNS, and EDA in order to guarantee the accuracy of the pre-populated report.

This also means that prime recipients will have to obtain and maintain a CCR and D&B number throughout the grant award. **Recipients should not that CCR numbers expire one year from date of issue, and therefore must be renewed prior to the expiration date in order to ensure that the CCR number is maintained.**



Prime recipients that have first-tier sub-awards valued at \$25,000 or greater do have responsibility to report data to the [www.fsrs.gov](http://www.fsrs.gov) website on the sub-award. After a sub-award is made, prime recipients will enter data on first-tier sub-awards at [www.fsrs.gov](http://www.fsrs.gov). Prime recipients will have until the end of the month after the month in which the sub-award is given to fulfill the reporting requirement.

Prime recipients will be required to provide the name, data, and amount of sub-awards greater than \$25,000 to their EDA Project Officers throughout the project period. EDA Project Officers will utilize this information to ensure that prime recipients are complying with requirements to report sub-award information to the FSRS website.

**At this time, FSRS reporting is a “one and done” report: unlike Recovery Act reporting which required quarterly reporting on disbursements and activities, FSRS reporting only requires a one-time report summarizing general information about the entity receiving the sub-award and the amount of the sub-award.**

The FSRS system will be set-up such that prime recipients will, upon logging onto the FSRS website, search for the prime grant information to enter the sub-award. Prime grantees will be able to flag incorrect pre-populated data on the prime award, so that Agencies are able to review and work with them to correct mis-information. Data submitted to [www.fsrs.gov](http://www.fsrs.gov) will be made available to the public via [www.USASpending.gov](http://www.USASpending.gov).

#### **Prime Recipient Responsibilities**

Prime grant recipients have ultimate responsibility to ensure that all reporting requirements are met, and to ensure that the data provided is accurate.

Prime recipients are required to register for and maintain an active CCR and DUNS number, and have a responsibility to ensure the accuracy of supplied information. Prime recipients must provide accurate information to Agencies when applying for grants, so that all pre-populated fields will be correct and accurate.

The DUNS number and associated data provided for both the prime recipient and the sub-awardee drive much of the reporting system, therefore making it critical that prime recipients utilize the correct entity DUNS number and CCR number.

Prime recipients will be required to provide the name, data, and amount of sub-awards greater than \$25,000 to their EDA Project Officers throughout the project period. Prime recipients must report information to sub-awards to [www.fsrs.gov](http://www.fsrs.gov) by the end of the month after the month in which the sub-award is made.

Prime recipients must also require all top-tier sub-awards to acquire and maintain a valid DUNS number.

**Agency Responsibilities**

Agencies are required to communicate information about reporting requirements to their grantees, and issue guidance to assist them in complying with all aspects of the Act.

Agencies are required to implement a new Special Award Conditions (SAC) on all awards made over \$25,000 indicating the reporting requirements. This SAC will require prime grantees to acquire and maintain active CCR and DUNS numbers throughout the award period, and will necessitate that all prime grantees required first-tier sub-awards to obtain and maintain an active DUNS number.

Agencies must continue reporting data to USASpending.gov as part of their FFATA data extracts, but now have a greater responsibility to ensure the accuracy of this data.

Additionally, as part of their administrative responsibilities overseeing projects, EDA Project Officers will be required to ensure that prime recipients who meet threshold requirements submit the requisite sub-award report.

**Difference between Transparency Act and GPRA Reporting**

The Transparency Act reporting requirements are designed to make Federal data more accessible to the public. As part of these requirements, primary grant recipients report data on the financial aspects of where Federal funds are going to a public website, [www.fsrs.gov](http://www.fsrs.gov). These reporting requirements are designed to make information on the progression of Federal funds immediately available.

On the other hand, Government Performance and Results Act (GPRA) reporting requirements are designed to capture the long-term impact of Federal programs. As part of these requirements, primary grant recipients report data to an EDA Staff member via OMB-approved forms 3, 6, and 9 years after an initial investment. GPRA reports are designed to highlight EDA's performance against specific long-term Agency and Departmental performance targets. In this realm, GPRA reports are designed to assess the direct long-term impact EDA investments have on a community in terms of job creation and retention and private investment leveraged and the improvement of community capacity.

**Helpful Websites**

The FFATA Sub-Award Reporting System: [www.fsrs.gov](http://www.fsrs.gov)

Federal Spending Transparency: [www.USASpending.gov](http://www.USASpending.gov)

OMB's website for Federal Spending Transparency: [www.whitehouse.gov/omb.open](http://www.whitehouse.gov/omb/open)

Central Contractor Registration System: [www.ccr.gov](http://www.ccr.gov)

Dun and Bradstreet: [www.dnb.com/us/](http://www.dnb.com/us/)

**Data Dictionary**

See attached data dictionary from OMB.

U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC ADJUSTMENT ASSISTANCE PROJECT COST CLASSIFICATIONS

EDA Award No.: 01-79-14217

State: New York

County: Ulster

<u>Cost Classification</u>	<u>Proposed</u>	<u>Approved</u>
Administrative and legal expenses		\$ 30,000
Land, structures, rights-of-way, appraisals, etc.		
Relocation expenses and payments		
Architectural and engineering fees	\$ 150,000	109,000
Other architectural and engineering fees		1,000
Project inspection fees		37,000
Site work	\$ 160,000	
Demolition and removal	\$ 80,000	
Construction	\$ 800,000	\$1,102,000
Equipment		
Contingencies	\$ 210,000	\$ 121,000
TOTAL PROJECT COSTS	\$1,400,000	\$1,400,000